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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MICHAEL DENTON,

11 Plaintiff,

12 v.

13 TIM THRASHER, KARIE RAINER,
14 LINDSEY MCINTYIRE, KEITH
GOODENOUGH, SCHOLLS,
15 SHELDON MOORE, JAIME DAVIS,
WILLIAM FLETCHER, MILLER,
16 DAVID MCKINNEY, SCOTT
RUSSELL, O'REILLY,

17 Defendants.

CASE NO. 3:18-CV-05017-BHS-DWC

ORDER ON MOTION TO AMEND

18 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United
19 States Magistrate Judge David W. Christel. Pending before the Court is Plaintiff Michael
20 Denton's Motion for Leave to File a Third Amended Complaint ("Motion"). Dkt. 60.

21 Plaintiff initiated this action on a *pro se* basis in January 2018. Dkt. 1. On May 21, 2018,
22 after screening Plaintiff's claims, the Court directed service of Plaintiff's Second Amended
23 Complaint upon Defendants Tim Thrasher, Dr. Karie Rainer, Lindsey McIntyre, Keith
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1 Goodenough, Officer Scholls, Lt. Sheldon Moore, Jaime Davis, Sgt. William Fletcher, Lt.
2 Miller, David McKinney, Scott Russell, and Officer Reilly (“Defendants”). Dkt. 22. The Court
3 also dismissed Plaintiff’s claims against several other individuals, including Robert Herzog,
4 because Plaintiff failed to allege personal participation as to these individuals. *See* Dkts. 21, 26.

5 On August 15, 2018, counsel entered an appearance on Plaintiff’s behalf. Dkt. 56. On
6 November 20, 2018, Plaintiff filed the Motion. Dkt. 60. In the Motion, Plaintiff seeks to add the
7 State of Washington and Robert Herzog as defendants, and add two claims for relief. *See* Dkts.
8 60, 61-1. Plaintiff also no longer lists Lt. Miller as a defendant in the caption or in the “parties”
9 section of the proposed amended complaint.¹ *See* Dkt. 61-1, pp. 2, 3-4.

10 On November 26, 2018, Defendants filed a Response, stating they “do not oppose”
11 Plaintiff’s amendment but request “the Court strike Robert Herzog as a defendant or decline to
12 order service against Mr. Herzog” because Plaintiff fails to “make any factual or legal claims
13 against him.” Dkt. 62, pp. 1-2.

14 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

15 (1) ***Amending as a Matter of Course***

A party may amend its pleading once as a matter of course within:

16 (A) 21 days after serving it, or

17 (B) if the pleading is one to which a responsive pleading is required, 21 days
18 after service of a responsive pleading or 21 days after service of a motion
under Rule 12(b), (e), or (f), whichever is earlier.

19 (2) ***Other Amendments***

20 In all other cases, a party may amend its pleading only with the opposing party’s
written consent or the court’s leave. The court should freely give leave when
justice so requires.

21 Defendants filed an Answer on July 20, 2018. Dkt. 49. Thus, the time has expired for
22 filing an amendment as a matter of course and Plaintiff cannot amend pursuant to Rule 15(a)(1).

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24 ¹ Further, Lt. Miller has not entered an appearance in the case. *See generally* Dkt.

1 In addition, Defendants consent to amendment of the complaint only to the extent Mr. Herzog is
2 not added as a defendant because they contend Plaintiff failed to allege personal participation
3 against him. *See* Dkt. 62.

4 The Court agrees. In the proposed amended complaint, Plaintiff lists Mr. Herzog as a
5 defendant in the caption and states in paragraph 10 that Mr. Herzog is “employed at the
6 Washington Department of Corrections and . . . [is] in some way personally responsible for the
7 harm that [P]laintiff suffered.” Dkt. 61-1, pp. 2, 4. However, other than this conclusory
8 allegation, Plaintiff fails to state any specific factual allegations against Mr. Herzog. *See id.* at 4-
9 8.

10 Therefore, the Court grants the Motion (Dkt. 60) as follows:

- 11 • Plaintiff is directed to file the third amended complaint by December 28, 2018. The
12 third amended complaint shall not list Mr. Herzog as a defendant in the caption or in
13 the body of the complaint.
- 14 • Plaintiff shall not make any other amendments to the third amended complaint. If
15 Plaintiff seeks to make any other amendments to the third amended complaint, he
16 shall file a new motion to amend the complaint.

17 Dated this 19th day of December, 2018.

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20 David W. Christel
21 United States Magistrate Judge
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